



MEDIA SERVICES

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 Des Plaines, IL 60016
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 desplaines.org

MEMORANDUM

Date: December 21, 2020
 To: Michael Bartholomew, MCP, LEED-AP, City Manager
 From: Maureen Stern, Special Event Coordinator *MS*
 Subject: Contract Award for City Website Services

Issue: For the City Council to approve an agreement with Granicus LLC, for website re-design, development, hosting and support services.

Analysis: The current version of the City’s website is required to be upgraded as the content management system (CMS) is ending its life expectancy. The City of Des Plaines currently utilizes the Granicus product called Civica as its website platform. In an effort to focus on one highly-flexible CMS option for the users, Granicus will be officially sunseting Civica as of January 1, 2022. Typically a website re-design and implementation can take up to 9 months and as such, the City will need to move forward with this project as soon as possible.

To assist in transitioning our existing website to a fully functioning and supported platform, Granicus has provided a quote for the design and implementation to their govAccess system. The quote includes the website design and implementation, annual maintenance, and hosting fees through 2025. It is our desire to leverage technology advances and consumer trends that warrant a fresh approach to our communications.

Recommendation: The Media Services review team, with approval from the City Manager, recommends that the Council award the attached contract to Granicus, located in St. Paul, Minnesota, at a cost not to exceed \$97,951.07.

Attachments:

- Attachment 1 – Resolution R-17-21
- Exhibit A – Master Subscription Agreement

CITY OF DES PLAINES

RESOLUTION R - 17 - 21

A RESOLUTION APPROVING AN AGREEMENT WITH GRANICUS, LLC FOR WEBSITE DESIGN, DEVELOPMENT, HOSTING, AND SUPPORT SERVICES.

WHEREAS, Article VII, Section 10 of the 1970 Illinois Constitution authorizes the City to contract with individuals, associations, and corporations in any manner not prohibited by law or ordinance; and

WHEREAS, the content management system used for the City's public website will no longer be supported after 2022; and

WHEREAS, the City has appropriated funds for use during the 2021 fiscal year for the design, development, delivery, hosting, maintenance, and support of a new public website for the City using a new content management system (collectively, "**Services**"); and

WHEREAS, in accordance with Chapter 10 of the City Code of the City of Des Plaines and the City's purchasing policy, the City Council has determined that procurement of the Services does not require competitive bidding because the Services require a high degree of professional skill where the ability or fitness of the individual plays an important part; and

WHEREAS, Granicus, LLC ("**Consultant**") is currently providing the Services for the City to the City's satisfaction; and

WHEREAS, the City desires to enter into a five-year agreement for the procurement of the Services from Consultant in the total not-to-exceed amount of \$97,951.07 ("**Agreement**"), subject to the appropriation of sufficient funds by the City Council for the Services in future fiscal years; and

WHEREAS, the City Council has determined that it is in the best interest of the City to enter into the Agreement with Consultant;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Plaines, Cook County, Illinois, in the exercise of its home rule powers, as follows:

SECTION 1: RECITALS. The foregoing recitals are incorporated into, and made a part of, this Resolution as findings of the City Council.

SECTION 2: APPROVAL OF AGREEMENT. The City Council hereby approves the Agreement in substantially the form attached to this Resolution as **Exhibit A**, and in a final form to be approved by the General Counsel.

SECTION 3: AUTHORIZATION TO EXECUTE AGREEMENT. The City Council hereby authorizes and directs the City Manager to execute, on behalf of the City, the final Agreement only after receipt by the City Clerk of at least two executed copies of the Agreement from Consultant; provided, however, that if the City Clerk does not receive two executed copies of the Agreement from Consultant within 60 days after the date of adoption of this Resolution, then this authority to execute and seal the Agreement will, at the option of the City Council, be null and void.

SECTION 4: EFFECTIVE DATE. This Resolution shall be in full force and effect from and after its passage and approval according to law.

PASSED this ____ day of _____, 2021.

APPROVED this ____ day of _____, 2021.

VOTE: AYES ____ NAYS ____ ABSENT ____

MAYOR

ATTEST:

Approved as to form:

DEPUTY CITY CLERK

Peter M. Friedman, General Counsel

DP-Resolution Approving Agreement with Granicus, LLC for City Website Services

Master Subscription Agreement

This Master Subscription Agreement ("**Agreement**") is made by and between The City of Des Plaines, an Illinois Home Rule Municipal Corporation ("**Customer**") and Granicus, LLC, a Minnesota Limited Liability Company d/b/a Granicus ("**Granicus**"). Customer and Granicus may each be referred to herein as "Party" or collectively as "Parties".

By accessing the Granicus Products and Services, Customer accepts this Agreement. In the event there is a conflict between this Agreement and any other contract Customer has for the Granicus Products and Services ("**Contract**"), the terms of the Contract shall prevail. Due to the rapidly changing nature of digital communications, this Agreement may be updated from time to time at Granicus' sole discretion. Notification to Customer will be via email or posting to the Granicus website.

1. Definitions. In addition to terms defined elsewhere in this Agreement, the following terms shall have the meaning specified:

"Agreement Term" means the total time covered by the Initial Term and all Extension Terms for each Order, SOW or Exhibit under this Agreement, further specified in Section 7.1.

"Exhibit" means any exhibit referenced herein and attached hereto.

"Extension Term" means any term that increases the length of the Initial Term of this Agreement.

"Fees" mean the fees charged by Granicus for the Granicus Products and Services as identified on each Order, SOW or Exhibit and, unless otherwise stated in each Order, SOW or Exhibit, invoiced upon commencement of the Order Term.

"Granicus Products and Services" means the products and services made available to Customer pursuant to this Agreement, which may include Granicus products, services, application software accessible for use by Customer on a subscription basis ("**SaaS**"), Granicus professional services, content from any professional services or other required equipment components ("**Required Hardware**"), as specified in each Order, SOW or Exhibit.

"Initial Term" shall have the meaning specified in the Order, SOW or Exhibit between Granicus and Customer for the first duration of performance that Customer has access to Granicus Products and Services.

"Order" means a written order, proposal, or purchase document in which Granicus agrees to provide and Customer agrees to purchase specific Granicus Products and Services.

"Order Term" shall mean the then-current duration of performance term identified on each Order, SOW or Exhibit, for which Granicus has committed to provide, and Customer has committed to pay for, Granicus Products and Services.

"Statement of Work" or "**SOW**" means a written order, proposal, or purchase document that is signed by both Parties and describes the Granicus Products and Services to be provided and/or performed by Granicus. Each Order, SOW or Exhibit shall describe the Parties' performance obligations and any assumptions or contingencies associated with the implementations of the Granicus Products and Services, as specified in each Order, SOW or Exhibit placed hereunder.

"Support" means the ongoing support and maintenance services performed by Granicus related to the Granicus Products and Services as specified in each Order, SOW or Exhibit placed between the Parties.

2. Ordering and Scope

- 2.1. Ordering Granicus Products and Services.** The Parties may execute one or more Order, SOW or Exhibit related to the sale and purchase of Granicus Products and Services. Each Order, SOW or Exhibit will generally include an itemized list of the Granicus Products and Services as well as the Order Term for such Granicus Products and Services. Each Order, SOW or Exhibit must, generally, be signed by the Parties; although, when a validly-issued purchase order by Customer accompanies the Order, SOW or Exhibit, then the Order, SOW or Exhibit need not be executed by the Parties. Each Order, SOW or Exhibit dated on or after the Effective Date shall be governed by this Agreement regardless of any pre-printed legal terms on each Order, SOW or Exhibit, and by this reference is incorporated herein.
- 2.2. Support.** Basic support related to standard Granicus Products and Services is included within the fees paid during the Order Term. Granicus may update its Support obligations under this Agreement, so long as the functionality purchased by Customer is not materially diminished.
- 2.3. Future Functionality.** Customer acknowledges that any purchase hereunder is not contingent on the delivery of any future functionality or features.
- 2.4. Cooperative Purchasing.** To the extent permitted by law and approved by Customer, the terms of this Agreement and set forth in one or more Order, SOW or Exhibit may be extended for use by other municipalities, school districts and governmental agencies upon execution of an addendum or other signed writing setting forth all of the terms and conditions for such use. The applicable fees for additional municipalities, school districts or governmental agencies will be provided by Granicus to Customer and the applicable additional party upon written request.

3. Use of Granicus Products and Services and Proprietary Rights

- 3.1. Granicus Products and Services.** The Granicus Products and Services are purchased by Customer as subscriptions during an Order Term specified in each Order, SOW or Exhibit. Additional Granicus Products and Services may be added during an Order Term as described in Section 2.1.
- 3.2. Permitted Use.** Subject to the terms and conditions of this Agreement, Granicus hereby grants during each Order Term, and Customer hereby accepts, solely for its internal use, a worldwide, revocable, non-exclusive, non-transferrable right to use the Granicus Products and Services to the extent allowed in the relevant Order, SOW or Exhibit (collectively the "Permitted Use"). The Permitted Use shall also include the right, subject to the conditions and restrictions set forth herein, to use the Granicus Products and Services up to the levels limited in the applicable Order, SOW or Exhibit.
- 3.2.1. Data Sources.** Data uploaded into Granicus Products and Services must be brought in from Customer sources (interactions with end users and opt-in contact lists). Customer cannot upload purchased contact information into Granicus Products and Services without Granicus' written permission and professional services support for list cleansing.
- 3.2.2. Content.** Customer can only use Granicus Products and Services to share content that is created by and owned by Customer and/or content for related organizations provided that it is in support of other organizations but not as a primary communication vehicle for other organizations that do not have a Granicus subscription. Any content deemed inappropriate for a public audience or in support of programs or topics that are unrelated to Customer, can be removed or limited by Granicus.
- 3.2.3. Granicus Communications Suite Subscriber Information**
- 3.2.3.1. Data Provided by Customer.** Data provided by Customer and contact information gathered through Customer's own web properties or activities will remain the property of Customer ("Direct Subscriber"), including any and all personally identifiable information (PII). Granicus will not release the data without the express written permission of Customer, unless required by law.

3.2.3.2. Data Obtained through the Granicus Advanced Network

3.2.3.2.1. Granicus offers a SaaS product, known as the Communications Cloud, that offers Direct Subscribers recommendations to subscriber to other Granicus customer's digital communication (the "Advanced Network"). When a Direct Subscriber signs up through one of the recommendations of the Advanced Network, that subscriber is a "Network Subscriber" to the agency it subscribed to through the Advanced Network.

3.2.3.2.2. Access to the Advanced Network is a benefit of the GovDelivery Communications Cloud subscription with Granicus. Network Subscribers are available for use only on the GovDelivery Communications Cloud while Customer is under an active GovDelivery Communications Cloud subscription. Network Subscribers will not transfer to Customer upon termination of any Granicus Order, SOW or Exhibit. Customer shall not use or transfer any of the Network Subscribers after termination of its Order, SOW or Exhibit placed under this Agreement. All information related to Network Subscribers must be destroyed by Customer within 15 calendar days of the Order, SOW or Exhibit placed under this Agreement terminating.

3.2.3.2.3. Opt-In. During the last 10 calendar days of Customer's Order Term for the terminating Order, SOW or Exhibit placed under this Agreement, Customer may send an opt-in email to Network Subscribers that shall include an explanation of Customer's relationship with Granicus terminating and that the Network Subscribers may visit Customer's website to subscribe to further updates from Customer in the future. Any Network Subscriber that does not opt-in will not be transferred with the subscriber list provided to Customer upon termination.

3.2.4. Advertising. Granicus Products and Services shall not be used to promote products or services available for sale through Customer or any third party unless approved in writing, in advance, by Granicus. Granicus reserves the right to request the details of any agreement between Customer and a third party that compensates Customer for the right to have information included in Content distributed or made available through Granicus Products and Services prior to approving the presence of Advertising within Granicus Products and Services.

3.3. Restrictions. Customer shall not:

3.3.1. Access or use any portion of Granicus Products and Services, except as expressly allowed by this Agreement or each Order, SOW or Exhibit placed hereunder;

3.3.2. Disassemble, decompile, or otherwise reverse engineer all or any portion of the Granicus Products and Services;

3.3.3. Use the Granicus Products and Services for any unlawful purposes;

3.3.4. Export or allow access to the Granicus Products and Services in violation of U.S. laws or regulations;

3.3.5. Except as expressly permitted in this Agreement, subcontract, disclose, rent, or lease the Granicus Products and Services, or any portion thereof, for third party use; or

3.3.6. Modify, adapt, or use the Granicus Products and Services to develop any software application intended for resale which uses the Granicus Products and Services in whole or in part.

3.4. Customer Feedback. Customer hereby grants to Granicus an irrevocable, non-exclusive, perpetual, royalty-free transferrable license, with right to sublicense, to use and incorporate into the Granicus Products and Services any suggestion, enhancement, request, recommendation, correction or other feedback provided by Customer relating to the use of the Granicus Products and Services.

3.5. Required Hardware. For Required Hardware purchased from Granicus by Customer, Granicus will provide to Customer a three (3) year warranty with respect to the Required Hardware. Within the three (3) year warranty period, Granicus shall repair or replace any Required Hardware provided directly from Granicus that fails to function properly due to normal wear and tear, defective workmanship, or defective materials. Required Hardware warranty shall commence on the Effective Date of each applicable Order, SOW or Exhibit.

3.6. Reservation of Rights. Subject to the limited rights expressly granted hereunder, Granicus and/or its licensors reserve all right, title and interest in the Granicus Products and Services, the documentation and resulting product including all related intellectual property rights. Further, no implied licenses are granted to Customer.

4. Payment

4.1. Fees. Customer agrees to pay all fees, costs and other amounts as specified in each Order, SOW or Exhibit. Granicus reserves the right to suspend any Granicus Products and Services should there be a lapse in payment. A lapse in the term of each Order, SOW or Exhibit will require the payment of a setup fee to reinstate the subscription. All fees are exclusive of applicable state, local, and federal taxes, which, if any, will be included in the invoice. It is Customer's responsibility to provide applicable exemption certificate(s). Unless indicated otherwise in the applicable Order, SOW or Exhibit, the fees shall be invoiced by Granicus and paid by Customer as follows:

4.1.1. Products. Product setup and annual fees are due at the beginning of the Initial Term, then annually at the beginning of any Extended Term or Order Term, within forty-five (45) days of receipt of invoice.

4.1.2. Services. Services supporting Products shall be paid annually commencing upon the completion of the Product implementation, or the Product being ready for Customer's use. Fees shall be paid by Customer within forty-five (45) days of receipt of invoice.

4.1.3. Required Hardware. For Required Hardware, delivery is complete once Customer receives Required Hardware components with the configured Granicus Product and Services.

4.2. Disputed Invoiced Amounts. Customer shall provide Granicus with detailed written notice of any amount(s) Customer reasonably disputes within thirty (30) days receipt of invoice for said amount(s) at issue. Granicus will not exercise its rights under 4.1 above if Customer has, in good faith, disputed an invoice and is diligently trying to resolve the dispute. Customer's failure to provide Granicus with notice of any disputed invoiced amount(s) shall be deemed to be Customer's acceptance of the content of such invoice.

4.3. Price Increases. Any price increases not negotiated in advance shall be provided by Granicus to Customer at least thirty (30) days prior to the end of the Order Term. Upon each yearly anniversary during the term of this Agreement (including the Initial Term, all Extended Terms, and all Order Terms), the Granicus Product and Services fees shall automatically increase from the previous term's fees by three (3) percent per year.

5. Representations, Warranties and Disclaimers

5.1. Representations. Each Party represents that it has validly entered into this Agreement and has the legal power to do so.

5.2. Warranties. Granicus warrants that it takes all precautions that are standard in the industry to increase the likelihood of a successful performance for the Granicus Products and Services; however, the Granicus Products and Services are provided "AS IS" and as available.

5.3. Disclaimers. EACH PARTY HEREBY DISCLAIMS ANY AND ALL OTHER WARRANTIES OF ANY NATURE WHATSOEVER WHETHER ORAL AND WRITTEN, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. GRANICUS DOES NOT WARRANT THAT GRANICUS PRODUCTS AND SERVICES WILL MEET CUSTOMER'S REQUIREMENTS OR THAT THE OPERATION THEREOF WILL BE UNINTERRUPTED OR ERROR FREE.

6. Confidential Information

6.1. Confidential Information. It is expected that one Party (disclosing Party) may disclose to the other Party (receiving Party) certain information which may be considered confidential and/or trade secret information ("Confidential Information"). Confidential Information shall include: (i) Granicus' Products and Services, (ii) non-public information if it is clearly and conspicuously marked as "confidential" or with a similar designation at the time of disclosure; (iii) non-public information of the disclosing Party if it is identified as confidential and/or proprietary before, during, or promptly after presentation or communication and (iv) any information that

should be reasonably understood to be confidential or proprietary to the receiving Party, given the nature of the information and the context in which disclosed.

- 6.2. Exceptions.** Confidential Information shall not include information which: (i) is or becomes public knowledge through no fault of the receiving Party; (ii) was in the receiving Party's possession before receipt from the disclosing Party; (iii) is rightfully receiving by the receiving party from a third party without any duty of confidentiality; (iv) is disclosed by the disclosing Party without a duty of confidentiality on the third party; (v) is independently developed by the receiving Party without use or reference to the disclosing Party's Confidential Information; or (vi) is disclosed with the prior written approval of the disclosing Party.

Confidential Information of disclosing Party may be disclosed in response to a freedom of information request, valid court order or other legal process, only to the extent required by such law, order or process and, if allowed by law and feasible considering any mandatory timeframes for disclosure, only after the recipient has given the owner written notice of such request, court order or other legal process promptly and the opportunity for the owner to seek a protective order or confidential treatment of such Confidential Information.

- 6.3. Storage and Sending.** In the event that Granicus Products and Services will be used to store and/or send Confidential Information, Granicus must be notified in writing, in advance of the storage or sending. Should Customer provide such notice, Customer must ensure that that Confidential Information or sensitive information is stored behind a secure interface and that Granicus Products and Services be used only to notify people of updates to the information that can be accessed after authentication against a secure interface managed by Customer. Customer is ultimately accountable for the security and privacy of data held by Granicus on its behalf.
- 6.4. Return of Confidential Information.** Upon request of the disclosing Party, termination, or expiration of this Agreement, the receiving Party shall, to the extent commercially practicable, destroy the disclosing Party's Confidential Information and, at the disclosing Party's request, certify the same.

7. Term and Termination

- 7.1. Agreement Term.** The Agreement Term shall begin on the Effective Date and continue through the latest date of the Order Term of each Order, SOW or Exhibit under this Agreement, unless otherwise terminated as provided in this Section 7. Each Order, SOW or Exhibit will specify an Order Term for the Granicus Products and Services provided under the respective Order, SOW or Exhibit. Customer's right to access or use the Granicus Products and Services will cease at the end of the Order Term identified within each Order, SOW or Exhibit, unless either extended or earlier terminated as provided in this Section 7. Unless a Party has given written notice to the other Party at least ninety (90) days prior to the end of the Order Term, the Granicus Products and Services will automatically renew for an Extension Term equal in duration to the Initial Term, or the then-current Order Term.
- 7.2. Effect of Termination.** If the Parties agree to terminate this Agreement and an Order, SOW or Exhibit is still in effect at the time of termination, then the terms and conditions contained in this Agreement shall continue to govern the outstanding Order, SOW or Exhibit until termination or expiration thereof. If the Agreement is terminated for breach, then unless otherwise agreed to in writing, all outstanding Orders, SOWs or Exhibits shall immediately terminate as of the Agreement termination date. Unless otherwise stated in this Agreement, in no event shall Customer be entitled to a refund of any prepaid fees upon termination.
- 7.3. Termination for Cause.** The non-breaching Party may terminate this Agreement upon written notice if the other Party is in material breach of this Agreement and fails to cure such breach within thirty (30) days after the non-breaching Party provides written notice of the breach. A Party may also terminate this Agreement immediately upon notice if the other Party: (a) is liquidated, dissolved, or adjudged to be in a state of bankruptcy or receivership; (b) is insolvent, unable to pay its debts as they become due, makes an assignment for the benefit of creditors or takes advantage of any law for the benefit of debtors; or (c) ceases to conduct

business for any reason on an ongoing basis leaving no successor in interest. Granicus may, without liability, immediately suspend or terminate any or all Order, SOW or Exhibit issued hereunder if any Fees owed under this Agreement are past due pursuant to Section 4.1.

7.4. Rights and Obligations After Termination. In the event of expiration or termination of this Agreement, Customer shall immediately pay to Granicus all Fees due to Granicus through the date of expiration or termination.

7.5. Survival. All rights granted hereunder shall terminate the latter of the termination or expiration date of this Agreement, or each Order, SOW or Exhibit. The provisions of this Agreement with respect to warranties, liability, and confidentiality shall survive termination of this Agreement and continue in full force and effect.

8. Limitation of Liability

8.1. EXCLUSION OF CONSEQUENTIAL AND RELATED DAMAGES. UNDER NO CIRCUMSTANCES SHALL GRANICUS BE LIABLE FOR ANY SPECIAL, INDIRECT, PUNITVE, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FURTHER, GRANICUS SHALL NOT BE LIABLE FOR: (A) ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OR CORRUPTION OF CUSTOMER DATA; (B) COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY; (C) LOSS OF BUSINESS; (D) DAMAGES ARISING OUT OF ACCESS TO OR INABILITY TO ACCESS THE SERVICES, SOFTWARE, CONTENT, OR RELATED TECHNICAL SUPPORT; OR (E) FOR ANY MATTER BEYOND GRANICUS' REASONABLE CONTROL, EVEN IF GRANICUS HAS BEEN ADVISED OF THE POSSIBILITY OF ANY OF THE FOREGOING LOSSES OR DAMAGES.

8.2. LIMITATION OF LIABILITY. IN NO INSTANCE SHALL EITHER PARTY'S LIABILITY TO THE OTHER PARTY FOR DIRECT DAMAGES UNDER THIS AGREEMENT (WHETHER IN CONTRACT OR TORT OR OTHERWISE) EXCEED THE FEES PAID BY CUSTOMER FOR THE GRANICUS PRODUCTS AND SERVICES DURING THE SIX (6) MONTHS IMMEDIATELY PRECEEDING THE DATE THE DAMAGED PARTY NOTIFIES THE OTHER PARTY IN WRITING OF THE CLAIM FOR DIRECT DAMAGES. NEITHER PARTY MAY INSTITUTE AN ACTION IN ANY FORM ARISING OUT OF NOR IN CONNECTION WITH THIS AGREEMENT MORE THAN TWO (2) YEARS AFTER THE CAUSE OF ACTION HAS ARISEN. THE ABOVE LIMITATIONS WILL NOT LIMIT CUSTOMER'S PAYMENT OBLIGATIONS UNDER SECTION 4 ABOVE.

9. Indemnification

9.1. Indemnification by Granicus. Granicus will defend Customer from and against all losses, liabilities, damages and expenses arising from any claim or suit by a third party unaffiliated with either Party to this Agreement ("Claims") and shall pay all losses, damages, liabilities, settlements, judgments, awards, interest, civil penalties, and reasonable expenses (collectively, "Losses," and including reasonable attorneys' fees and court costs), to the extent arising out of any Claims by any third party that Granicus Products and Services infringe a valid U.S. copyright or U.S. patent issued as of the date of the applicable Order, SOW or Exhibit. In the event of such a Claim, if Granicus determines that an affected Order, SOW or Exhibit is likely, or if the Solution is determined in a final, non-appealable judgment by a court of competent jurisdiction, to infringe a valid U.S. copyright or U.S. patent issued as of the date of the applicable Order, SOW or Exhibit, Granicus will, in its discretion: (a) replace the affected Granicus Products and Services; (b) modify the affected Granicus Products and Services to render it non-infringing; or (c) terminate this Agreement or the applicable Order, SOW or Exhibit with respect to the affected Solution and refund to You any prepaid fees for the then-remaining or unexpired portion of the Subscription Order Term. Notwithstanding the foregoing, Granicus shall have no obligation to indemnify, defend, or hold Customer harmless from any Claim to the extent it is based upon: (i) a modification to any Solution by Customer (or by anyone under Customer's direction or control or using logins or passwords assigned to Customer); (ii) a modification made by Granicus pursuant to Customer's required instructions or specifications or in reliance on materials or information provided by Customer; or (iii) Customer's use (or use by anyone under Customer's direction or control or using logins or passwords assigned to Customer) of any Granicus Products and Services other than in accordance with this Agreement. This Section 9.1 sets forth

Customer's sole and exclusive remedy, and Granicus' entire liability, for any Claim that the Granicus Products and Services or any other materials provided by Granicus violate or infringe upon the rights of any third party.

- 9.2. Indemnification by Customer.** Customer shall defend, indemnify, and hold Granicus harmless from and against any Claims, and shall pay all Losses, to the extent arising out of or related to (a) Customer's (or that of anyone authorized by Customer or using logins or passwords assigned to Customer) use or modification of any Granicus Products and Services; (b) any Customer content; or (c) Customer's violation of applicable law.
- 9.3. Defense.** With regard to any Claim subject to indemnification pursuant to this Section 9: (a) the Party seeking indemnification shall promptly notify the indemnifying Party upon becoming aware of the Claim; (b) the indemnifying Party shall promptly assume sole defense and control of such Claim upon becoming aware thereof; and (c) the indemnified Party shall reasonably cooperate with the indemnifying Party regarding such Claim. Nevertheless, the indemnified Party may reasonably participate in such defense, at its expense, with counsel of its choice, but shall not settle any such Claim without the indemnifying Party's prior written consent. The indemnifying Party shall not settle or compromise any Claim in any manner that imposes any obligations upon the indemnified Party without the prior written consent of the indemnified Party.

10. General

- 10.1. Relationship of the Parties.** Granicus and Customer acknowledge that they operate independent of each other. Nothing in this Agreement shall be deemed or construed to create a joint venture, partnership, agency, or employee/employer relationship between the Parties for any purpose, including, but not limited to, taxes or employee benefits. Each Party will be solely responsible for the payment of all taxes and insurance for its employees and business operations.
- 10.2. Subcontractors.** Granicus agrees that it shall be responsible for all acts and omissions of its subcontractors to the same extent Granicus would be responsible if committed directly by Granicus.
- 10.3. Headings.** The various section headings of this Agreement are inserted only for convenience of reference and are not intended, nor shall they be construed to modify, define, limit, or expand the intent of the Parties.
- 10.4. Amendments.** This Agreement may not be amended or modified except by a written instrument signed by authorized representatives of both Parties. Notwithstanding the foregoing, Granicus retains the right to revise the policies referenced herein at any time, so long as the revisions are reasonable and consistent with industry practices, legal requirements, and the requirements of any third-party suppliers.
- 10.5. Severability.** To the extent permitted by applicable law, the parties hereby waive any provision of law that would render any clause of this Agreement invalid or otherwise unenforceable in any respect. In the event that a provision of this Agreement is held to be invalid or otherwise unenforceable, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by applicable law, and the remaining provisions of this Agreement will continue in full force and effect.
- 10.6. Assignment.** Neither Party may assign, delegate, or otherwise transfer this Agreement or any of its rights or obligations hereunder, either voluntarily or by operation of law, without the prior written consent of the other Party (such consent not to be unreasonably withheld); provided, however, that either Party may assign this Agreement without the other Party's consent in the event of any successor or assign that has acquired all, or substantially all, of the assigning Party's business by means of merger, stock purchase, asset purchase, or otherwise. Any assignment or attempted assignment in violation of this Agreement shall be null and void.
- 10.7. No Third-Party Beneficiaries.** Subject to Section 10.6, this Agreement is binding upon, and insures solely to the benefit of the Parties hereto and their respective permitted successors and assigns; there are no third-party beneficiaries to this Agreement.
- 10.8. Notice.** Other than routine administrative communications, which may be exchanged by the Parties via email or other means, all notices, consents, and approvals hereunder shall be in writing and shall be deemed to have been given upon: (a) personal delivery; (b) the day of receipt, as shown in the applicable carrier's systems,

if sent via FedEx, UPS, DHL, or other nationally recognized express carrier; (c) the third business day after sending by U.S. Postal Service, First Class, postage prepaid, return receipt requested; or (d) sending by email, with confirmed receipt from the receiving party.

- 10.9. Force Majeure.** Neither Party shall be in breach of this Agreement solely due to breach caused by circumstances beyond the control and without the fault or negligence of the Party failing to perform. Such causes include but are not limited to acts of God, wars, fires, floods, government regulations, shortage or supplies, acts of terrorism, or strikes.
- 10.10. Choice of Law and Jurisdiction.** This Agreement shall be governed by and interpreted under the laws of the State of Illinois, without reference to the State's principles of conflicts of law. The parties expressly consent and submit to the exclusive jurisdiction of the state and federal courts of Cook County, Illinois.
- 10.11. Entire Agreement.** This Agreement, together with all Orders, SOWs or Exhibits referenced herein, sets forth the entire understanding of the Parties with respect to the subject matter of this Agreement, and supersedes any and all prior oral and written understandings, quotations, communications, and agreements. Granicus and Customer agree that any and all Orders, SOWs or Exhibits are incorporated herein by this reference. In the event of possible conflict or inconsistency between such documents, the conflict or inconsistency shall be resolved by giving precedence in the following order: (1) the terms of this Agreement; (2) Exhibits (excluding orders) hereto; (3) Orders; and (4) all other SOWs or other purchase documents.
- 10.12. Reference.** Notwithstanding any other terms to the contrary contained herein, Customer grants Granicus the right to use Customer's name and logo in customer lists and marketing materials.
- 10.13. Injunctive Relief.** Granicus is entitled to obtain injunctive relief if Customer's use of Granicus Products and Services is in violation of any restrictions set forth in this Agreement.
- 10.14. No Personal Liability.** No elected or appointed official, or employee of the Customer shall be personally liable, in law or in contract, to Granicus as the result of the execution of this Agreement.
- 10.15. Conflict of Interest.** Granicus represents and certifies that, to the best of its knowledge, (1) no elected or appointed Customer official, employee or agent is interested in the business of Granicus or in this Agreement, or has personally received payment or other consideration for this Agreement; (2) as of the date of this Agreement neither Granicus nor any person employed or associated with Granicus has any interest that would conflict in any manner or degree with the performance of the obligations under this Agreement; and (3) neither Granicus nor any person employed by or associated with Granicus shall at any time during the term of this Agreement obtain or acquire any interest that would conflict in any manner or degree with the performance of the obligations under this Agreement.
- 10.16. No Collusion.** Granicus represents and certifies that Granicus is not barred from contracting with a unit of state or local government as a result of (i) a delinquency in the payment of any tax administered by the Illinois Department of Revenue unless Granicus is contesting, in accordance with the procedures established by the appropriate revenue act, its liability for the tax or the amount of the tax, as set forth in Section 11-42.1-1 *et seq.* of the Illinois Municipal Code, 65 ILCS 5/11-42.1-1 *et seq.*; or (ii) a violation of either Section 33E-3 or Section 33E-4 of Article 33E of the Criminal Code of 1961, 720 ILCS 5/33E-1 *et seq.* Granicus represents that the only persons, firms, or corporations interested in this Agreement as principals are those disclosed to the Customer prior to the execution of this Agreement, and that this Agreement is made without collusion with any other person, firm, or corporation. If at any time it shall be found that Granicus has, in procuring this Agreement, colluded with any other person, firm, or corporation, then Granicus shall be liable to the Customer for all loss or damage that the Customer may suffer, and this Agreement shall, at the Customer's option, be null and void.
- 10.17. Sexual Harassment Policy.** Granicus certifies that it has a written sexual harassment policy in full compliance with Section 2-105(A)(4) of the Illinois Human Rights Act, 775 ILCS 5/2-105(A)(4).
- 10.18. Patriot Act Compliance.** Granicus represents and warrants to the Customer that neither it nor any of its principals, shareholders, members, partners, or affiliates, as applicable, is a person or entity named as a Specially Designated National and Blocked Person (as defined in Presidential Executive Order 13224) and that it is not acting, directly or indirectly, for or on behalf of a Specially Designated National and Blocked Person. Granicus further represents and warrants to the Customer that Granicus and its principals, shareholders, members, partners, or affiliates, as applicable, are not, directly or indirectly, engaged in, and are not facilitating, the

transactions contemplated by this Agreement on behalf of any person or entity named as a Specially Designated National and Blocked Person. Granicus hereby agrees to defend, indemnify and hold harmless the Customer, its corporate authorities, and all Customer elected or appointed officials, officers, employees, agents, representatives, engineers, and attorneys, from and against any and all claims, damages, losses, risks, liabilities, and expenses (including reasonable attorneys' fees and costs) arising from or related to any breach of the representations and warranties in this subsection.

10.19. City Council Authority. Notwithstanding any provision of this Agreement, any negotiations or agreements with, or representations by Granicus to, vendors, pertaining to this Agreement, shall be subject to the approval of the City Council of the City of Des Plaines, Illinois. The Customer shall not be liable to any vendor or third party for any agreements made by Granicus without the knowledge and approval of the City Council of the City of Des Plaines, Illinois.

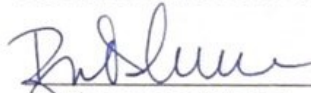
10.20. Compliance with Laws. Granicus shall give all notices, pay all fees, and take all other action that may be necessary to ensure that the Services are provided, performed, and completed in accordance with all required governmental permits, licenses, or other approvals and authorizations that may be required in connection with providing, performing, and completing the Services, and with all applicable statutes, ordinances, rules, and regulations, including, without limitation: any applicable prevailing wage laws; the Fair Labor Standards Act; any statutes regarding qualification to do business; any statutes requiring preference to laborers of specified classes; any statutes prohibiting discrimination because of, or requiring affirmative action based on, race, creed, color, national origin, age, sex, or other prohibited classification, including, without limitation, the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 *et seq.*, and the Illinois Human Rights Act, 775 ILCS 5/1-101 *et seq.* Granicus shall also comply with all conditions of any federal, state, or local grant received by the Customer or Granicus with respect to this Agreement or the Services.

10.20.1 Liability for Noncompliance. Granicus shall be solely liable for any fines or civil penalties that are imposed by any governmental or quasi-governmental agency or body that may arise, or be alleged to have arisen, out of or in connection with Granicus', or any of its subcontractors', performance of, or failure to perform, the Services or any part thereof.

10.20.2 Required Provisions. Every provision of law required by law to be inserted into this Agreement shall be deemed to be inserted herein.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly-authorized representatives on the Effective Date as set forth above.

APPROVED AS TO FORM ONLY

 12/7/2020
 Des Plaines General Counsel Dated

Granicus

Des Plaines, IL

By: _____
 (Authorized Signature)

Name: _____
 (Print or Type Name of Signatory)

Title: _____

Date: _____
 (Execution Date)

By: _____
 (Authorized Signature)

Name: _____
 (Print or Type Name of Signatory)

Title: _____

Date: _____
 (Execution Date)

Attachment(s): Exhibit A (Proposal)

Exhibit A

Granicus Proposal for Des Plaines, IL

Granicus Contact

Name: Jordan Duesterhoeft
Phone:
Email: jordan.duesterhoeft@granicus.com

Proposal Details

Quote Number: Q-124658
Prepared On: 12/4/2020
Valid Through: 12/31/2020

Pricing

Payment Terms: Net 45 (Payments for subscriptions are due at the beginning of the period of performance.)
Currency: USD
Current Billing Term End Date: 12/31/2021

Period of Performance: The Agreement will begin on 1/1/2021 and will continue for 60 months.

Terminating Subscription(s)

Solution	Billing Frequency	Quantity/Unit	Prior Annual Fee
Monthly Maintenance, Hosting & Support (CIVICA)	Annual	0 Each	\$10,821.18

Upon the signing of this Agreement, annual fees for the terminating subscription(s) shall cease.

Client will continue to have access to and use the terminating solution until the new subscription(s) is/are deployed.

Upon the deployment of Client's new solution as determined at Granicus' sole discretion, Granicus shall remove access to the Client's terminating subscription(s).

One-Time Fees			
Solution	Billing Frequency	Quantity/Unit	One-Time Fee
govAccess – Website Design and Implementation - Trailblazer	Milestones - 40/20/20/20	1 Each	\$38,600.00
SUBTOTAL:			\$38,600.00

Annual Fees for New Subscriptions			
Solution	Billing Frequency	Quantity/Unit	Annual Fee
govAccess - Maintenance, Hosting, & Licensing Fee - Core	Annual	1 Each	\$10,821.00
SUBTOTAL:			\$10,821.00

Remaining Period(s)				
Solution(s)	1/1/2022 - 12/31/2022	1/1/2023 - 12/31/2023	1/1/2024 - 12/31/2024	1/1/2025 - 12/31/2025
govAccess - Maintenance, Hosting, & Licensing Fee - Core	\$11,600.00	\$11,948.00	\$12,306.44	\$12,675.63
SUBTOTAL:	\$11,600.00	\$11,948.00	\$12,306.44	\$12,675.63

Product Descriptions	
Name	Description
govAccess – Website Design and Implementation - Trailblazer	<p>Website Design and Implementation - Trailblazer provides a citizen focused website and includes:</p> <ul style="list-style-type: none"> • Advanced UX Consultation, which may include one (1) or more of the following: 1. One (1) site analytics report 2. One (1) heatmap analysis 3. One (1) internal stakeholder survey 4. One (1) community stakeholder survey 5. One (1) remote user testing of top tasks • Three (3) customer landing page consultation • Fully customized homepage wireframe • Fully responsive design • Custom mobile homepage or standard mobile responsive homepage • Video background or standard rotating image carousel (switchable at any time) • Up to three (3) customer experience features - Choose from Granicus' library including service finder, geo finder, or data visualization banner • Programming/CMS implementation • Migrate up to 200 webpages • Up to ten (10) forms converted into the new CMS • One (1) day of on-site consultation / training to be applied towards additional project management or training (two (2) of three (3) days must be consecutive)
govAccess - Maintenance, Hosting, & Licensing Fee - Core	<p>The govAccess Maintenance, Hosting, and Licensing plan is designed to equip the client with the technology, expertise and training to keep the client's website relevant and effective over time.</p> <p>Services include the following:</p> <ul style="list-style-type: none"> • Ongoing software updates • Unlimited technical support (6:00 AM - 6:00 PM PT, Monday - Friday) • Access to training webinars and on-demand video library • Access to best practice webinars and resources • Annual health check with research-based recommendations for website optimization • DDoS mitigation • Disaster recovery with 90-minute failover (RTO) and 15-minute data replication (RPO)

Terms and Conditions

- **This quote is exclusive of applicable state, local, and federal taxes, which, if any, will be included in the invoice. It is the responsibility of Des Plaines, IL to provide applicable exemption certificate(s).**
- **Any lapse in payment may result in suspension of service and will require the payment of a setup fee to reinstate the subscription.**
- **If submitting a Purchase Order, please include the following language: All pricing, terms and conditions of quote Q-124658 dated 12/4/2020 are incorporated into this Purchase Order by reference.**
- **Billing Frequency Notes (Milestones - 40/20/20/20):**
 - **An initial payment equal to 40% of the total;**
 - **A payment equal to 20% of the total upon Granicus' delivery of the draft homepage design concepts to the Client;**
 - **A payment equal to 20% of the total upon implementation of the main website into the VCMS on a Granicus-hosted development server; and**
 - **A payment equal to 20% of the total upon completion; provided, however that the Client has completed training. If the Client has not completed training, then Granicus shall invoice the Client at the earlier of: completion of training or 21 days after completion.**
- **Granicus certifies that it will not sell, retain, use, or disclose any personal information provided by Client for any purpose other than the specific purpose of performing the services outlined within this Agreement.**
- **Upon the effective date, this Agreement shall supersede and replace any previous agreement between the parties for the Terminating and/or Existing Subscriptions listed herein. All such prior agreements between the parties are hereby void and of no force and effect**
- **Granicus certifies that it will not sell, retain, use, or disclose any personal information provided by Client for any purpose other than the specific purpose of performing the services outlined within this Agreement.**
- **Client will be eligible to request a basic redesign credit for one (1) govAccess main website after completing year four (4) of this uninterrupted five (5) year Agreement.**
 - **Client must request the basic redesign credit prior to the end of the initial term.**
 - **The redesign will be available after payment of the annual invoice for year four (4) of the Agreement.**
 - **The basic redesign credit will only be available if there are no outstanding govAccess invoices at the time the request is made.**
 - **Any termination of the Agreement prior to the end of the initial term renders the basic redesign credit offer null and void.**
 - **Granicus will not develop a sitemap or new content as an included part of any free redesign work, but will assist the Client in transferring existing content into the new design.**
- **The basic redesign credit will be equivalent to either:**
 - **A template selected from the then-current Granicus best practices library, or;**
 - **A dollar credit not to exceed \$8,000.00 applied towards a custom redesign of one (1) existing main website**